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Annual Premium Pay for Standby Duty

Entitlements under title 5, United States Code and the Fair Labor Standards Act (FLSA)

References: 5 CFR 550.141 - 144 and 5 CFR 551.431

Q.1. What is annual standby duty for premium pay?

A.1. Annual premium pay for standby duty may be paid to an employee when he or she is required to remain at or within the confines of the duty station for longer than ordinary periods of time, a substantial part of which consists of remaining in readiness to perform work rather than actually performing work. Such pay is provided instead of premiums for regularly scheduled overtime, night, holiday, and Sunday work.
(See 5 USC 5545(c)(1) and 5 CFR 550.141 & 550.143.)

Q.2. How does standby status affect an employee?

A.2. Standby status refers to those times when an employee is not required to perform actual work but is free to eat, sleep, read, watch television, or engage in other similar pursuits.
(See 5 CFR 550.143(e).)

Q.3. How does standby duty or standby status effect employees covered by the Fair Labor Standards Act (FLSA)?

A.3. The FLSA does not recognize standby duty. An employee is either on or off duty. If waiting time or idle time is controlled by and benefits the agency, then the waiting or idle time is considered to be hours of work. (See 5 CFR 551.401(a)(3).)

Likewise, standby status is not applicable under the FLSA. Time spent in a standby status is considered hours of work.

Q.4. How is the employee restricted while on standby duty or in a standby status?

A.4. Under title 5, the employee on standby duty is restricted to:

- (1) his or her regular duty station,
- (2) quarters provided by the agency and designated for use by employees in a state of readiness to perform actual work, or
- (3) the employee's living quarters, when so designated by the agency as the duty station and when the employee's whereabouts and activities are restricted substantially.
(See 5 CFR 550.143(b).)

Under the FLSA, the employee is considered to be on duty if:

- (1) restricted to the agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
- (2) restricted to his or her living quarters or designated post of duty, his or her activities substantially limited, and he or she is required to remain in a state of readiness to perform work. (See 5 CFR 551.431(a).)

Q.5. What do "longer than ordinary" and "substantial standby status" mean?

A.5. "Longer than ordinary" means a regularly scheduled tour of duty exceeding 40 hours in a week. (See 5 CFR 550.143(c).)

"Substantial standby status" means the employee must spend at least 25 percent of the entire regularly scheduled tour of duty in a state of readiness to perform work; or, in addition to performing actual work during a regularly scheduled 40-hour workweek, the employee also remains in a standby status on certain nights or days that are not included in the basic 40-hour workweek. (See 5 CFR 550.143(d).)

Q.6. How is annual premium pay for standby duty determined?

A.6. Under title 5, annual premium pay for standby duty is determined as a percentage, but not more than 25 percent, of the employee's rate of basic pay which does not exceed the minimum rate for GS-10 including any locality based-comparability payment or special salary rate of pay. The percentage is determined based on the conditions outlined at Q. 8. (p. 3).

Q.7. What are the eligibility requirements for annual premium pay for standby duty?

- A.7. (1) The employee must be officially ordered to regularly remain at his or her duty station. (See 5 CFR 550.143(1).)
- (2) The employee's tour of duty must include the substantial period of time the employee is ordered to remain at his or her station on a regular and recurring basis. (See 5 CFR 550.143(2).)
- (3) The work performed during this period of time must be associated with the employee's regularly assigned duties, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises. (See 5 CFR 550.143(3).)

The FLSA does not provide for standby pay. However, a non-exempt employee on standby is entitled to overtime pay for the number of hours of duty in excess of the FLSA overtime standard. Standard calculations of overtime pay under the FLSA are discussed in the attachment to this guide.

Q.8. What amounts of pay is premium pay for standby duty intended to provide?

- A.8. (1) The annual premium pay must provide an amount greater than the amount payable under title 5 for all hours during which work actually is performed (not including duty hours when no work is performed). (See 5 CFR 550.142(a).)
- (2) The annual premium must provide an amount less than the amount payable under title 5 for all hours in the tour of duty regardless whether actual work is performed. (See 5 CFR 550.142(b).)

Under the FLSA, although the employee receives annual premium pay for standby duty, he or she also is entitled to an **additional** one-half of his or her hourly regular rate of pay for each overtime hour worked or spent in standby status that is in excess of the overtime standard. (See 5 CFR 551.512.)

Q.9. How does standby pay relate to basic pay?

- A.9. (1) Under title 5, standby premium pay is not considered part of basic pay for computing foreign and nonforeign allowances and differentials, or other benefits or deductions computed on basic pay alone. (See 5 CFR 550.163(d)(1).)

- (2) Standby premium pay is considered basic pay for computing severance pay, compensation for work related injuries, annuities under the Civil Service Retirement System, and the value of Federal Employees Group Life Insurance.
(See 5 CFR 550.163(d)(2).)

Q.10. How are sleep and meal periods treated under standby duty?

A.10. Under title 5, sleep and meal periods are deducted from hours of work according to agency regulations. (See 5 CFR 610.111(c)(2).)

Except for firefighters, under the FLSA, bona fide meal periods are deducted from hours of work. (See 5 CFR 551.432.) Sleep periods of up to 8 hours during tours of duty of “24 hours or more” are deducted from hours worked. (See 5 CFR 551.411(c).) Hours in an unpaid nonwork status (such as leave without pay, furlough, absence without leave) are not hours of work. (See 5 CFR 551.401(c).)

Any rest period authorized by an agency that does not exceed 20 minutes and that is within the workday is considered hours of work. (See 5 CFR 551.412(b).)

Q.11. What is the effect of the limitation on premium pay for employees receiving standby duty pay?

A.11. The standard limitations on premium pay apply:
(1) hourly premium pay cap at GS-10/1,
(2) annual premium pay cap at GS-15/10.
(See 5 CFR 550.105 and 550.111.)

The title 5 limitation on premium pay does not apply for purposes of overtime pay under FLSA. (See 551.501(d).)

Q.12. How is annual premium pay for standby duty determined?

A.12 Annual premium pay for standby duty is determined under 5 CFR 550.144 Rates of premium pay payable under §550.141.

(a)(1) Tour of duty with 24 hours on and 24 hours off with a schedule of :

Hours a week	Hours of actual work	%age
60 a week	less than 25 hours	5%
60 a week	25 hours or more	10%

72 a week	less than 24	15%
72 a week	24 hours or more	20%
84 a week		25%

(a)(2) Tour of duty = all day light hours, 12 hours a day, or 24 hours a day, with employee living at worksite during tour:

Days a week	Hours of actual work a week	%age
5 days a week	less than 25 hours	5%
5 days a week	25 hours or more	10%
6 days a week	less than 30 hours	15%
6 days a week	30 hours or more	20%
7 days a week		25%

(a)(3) Employee has basic workweek requiring full-time performance of duty plus requirement to remain on standby duty:

14 to 18 hours a week on workdays or extending into a nonworkday--15%
 19 to 27 hours a week on workdays or extending into a nonworkday--20%
 28 or more hours a week on workdays or extending into a nonworkday--25%

7 to 9 hours on one or more regular nonworkdays--15%
 10 to 13 hours on one or more regular nonworkdays--20%
 14 or more hours on one or more regular nonworkdays--25%

(a)(4) Percentage of premium pay is increased when employee is required to work on Sunday an average of:

20 to 40 Sundays a year increases rate by 2★ %
 41 or more Sundays a year increases rate by 5%

Increase under this subparagraph does not increase premium beyond 25%.

108 hour biweekly schedule

5 tours of 21-hour and 36-minutes each per pay period, employees actually work 8 hours and 36 minutes of each tour, and perform 13 hours of standby duty (2 tours in one week, and 3 tours in the other week).

receive 15 percent rate (this appears to be too high a rate, using EMT criteria, below, employees should receive 5 percent.)

employees are entitled to FLSA overtime the week they are scheduled for 3 tours of duty.

118 hour biweekly schedule

employees scheduled for duty 59 hours each week, 4 tours of 8 3/4 hours each and 1 tour of 24 hours. No documentation of number of hours of actual work. It appears that employees work 40 hours a week and perform 19 hours of standby duty.

receive 20 percent rate (appears to be correct under 550.114(a)(3))

fire chiefs and inspectors, not entitled to any FLSA overtime pay.

90 hour biweekly schedule

5 tours of 18 hours each per pay period, employees actually work 8 hours of each tour, and perform 10 hours of standby duty (2 tours in one week, and 3 tours in the other week).

receive 5 percent rate (approved by OPM)

employees are entitled to 1 hour of FLSA overtime during the week they are scheduled for 3 tours of duty.

EMT approved schedule--54 hours weekly

4 tours of 14 hours each, employees actually work 8 ★ hours of each tour and perform 5 ★ hours of standby duty, average annual tours on Sunday--20 to 40

receive 7.5 percent rate (approved by OPM) Note: rate increased by 2.5 percent due to work on Sunday, rate based on actual work/standby duty--5 percent.